

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

Mauern Jerome Ashford,

Plaintiff,

Hon. Hugh B. Scott

08CV393S

-v-

**Report &
Recommendation**

Glenn Goord, et al.,

Defendants.

Pending before the Court are the following motions: plaintiff's motion to consolidate this case with Ashford v. Goord et al., Civ. No. 07CV191 (Docket No. 11)¹; and the defendants' motion to dismiss the petition (Docket No. 10).

In an Order dated November 19, 2009, the plaintiff was directed to respond to the motion to dismiss filed by defendants by December 11, 2009. (Docket No. 14). The plaintiff failed to submit any response to the the motion. Instead, on December 21, 2009, the plaintiff requested additional time to respond to the motion. (Docket No. 17). By Order dated December 28, 2009, the plaintiff's request was granted and the plaintiff was directed to respond to motion to dismiss by January 15, 2010. (Docket No. 18). The plaintiff has again failed to respond to the motion to dismiss or otherwise contacted the Court.

¹ The complaint in Ashford v. Goord, Civ. No. 07CV191, was dismissed on March 17, 2010 based upon the plaintiff's failure to prosecute that action. Thus, the motion to consolidate the instant petition with the complaint in that case is moot.

Under the circumstances of this case, the plaintiff appears to have abandoned his claims in this matter. It is recommended that the petition be dismissed due to plaintiff's failure to prosecute his claims pursuant to Rule 41 of the Federal Rules of Civil Procedure. The pending motions should be denied as moot.

Pursuant to 28 U.S.C. §636(b)(1), it is hereby ordered that this Report & Recommendation be filed with the Clerk of the Court and that the Clerk shall send a copy of the Report & Recommendation to all parties.

ANY OBJECTIONS to this Report & Recommendation must be filed with the Clerk of this Court within fourteen(14) days after receipt of a copy of this Report & Recommendation in accordance with 28 U.S.C. §636(b)(1), Rules 6(a), 6(e) and 72(b) of the Federal Rules of Civil Procedure, as well as W.D.N.Y. Local Rule 72(a)(3).

FAILURE TO FILE OBJECTIONS TO THIS REPORT & RECOMMENDATION WITHIN THE SPECIFIED TIME, OR TO REQUEST AN EXTENSION OF TIME TO FILE OBJECTIONS, WAIVES THE RIGHT TO APPEAL ANY SUBSEQUENT ORDER BY THE DISTRICT COURT ADOPTING THE RECOMMENDATIONS CONTAINED HEREIN. Thomas v. Arn, 474 U.S. 140, 106 S.Ct. 466, 88 L.Ed2d 435 (1985); F.D.I.C. v. Hillcrest Associates, 66 F.3d 566 (2d. Cir. 1995); Wesolak v. Canadair Ltd., 838 F.2d 55 (2d Cir. 1988); see also 28 U.S.C. §636(b)(1), Rules 6(a), 6(e) and 72(b) of the Federal Rules of Civil Procedure, and W.D.N.Y. Local Rule 72(a)(3).

Please also note that the District Court, on *de novo* review, will ordinarily refuse to consider arguments, case law and/or evidentiary material which could have been, but was not,

presented to the Magistrate Judge in the first instance. See Patterson-Leitch Co. Inc. v. Massachusetts Municipal Wholesale Electric Co., 840 F.2d 985 (1st Cir. 1988).

Finally, the parties are reminded that, pursuant to W.D.N.Y. Local Rule 72.3(a)(3), “written objections shall specifically identify the portions of the proposed findings and recommendations to which objection is made and the basis for such objection and shall be supported by legal authority.” **Failure to comply with the provisions of Rule 72.3(a)(3) may result in the District Court’s refusal to consider the objection.**

So Ordered.

/s/ Hugh B. Scott
United States Magistrate Judge
Western District of New York

Buffalo, New York
April 26, 2010